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A kick in the teeth for the backbone of the nation

“It’s a great day to be a lawyer,” says Property Council chief executive Leonie Freeman, “but a terrible day for property owners and tenants, who’ve suddenly had their contracts changed without notice or consultation.”

“Today’s proposal to amend the Property Law Act to insert a clause into commercial leases is a kick in the teeth for the backbone of the nation.

“What the Government fails to realise is that these property owners are the same people who are working hard to keep construction, development and housing projects going. They have effectively dropped a bomb on their most vital industry.

“Property owners have been supporting tenants throughout the lockdowns to the tune of hundreds of millions of dollars – we know of one landlord who has provided rent relief of over \$180m alone. Most landlords and tenants have approached this issue constructively whether they had the no access clause (ADLS Clause 27.5) in their contracts or not. To legislate one solution across all commercial property contracts where each lease is bespoke and unique only serves to create complex problems for the whole industry.

“This proposal completely misses the intricacies of commercial leases. Where is the bespoke response for hospitality or retail? Why aren’t we focusing on where the need is the greatest?

“There’s also the added ambiguity of what a ‘fair’ proportion of rent relief looks like. While many landlords and tenants might be able to come to an agreement, many others will fail to find a middle ground, creating plenty of work for our legal community, something our politicians seem to have difficulty understanding.

“Property Council is completely perplexed by the Government’s proposal given the Minister’s previous public statements, with Hon Kris Faafoi effectively echoing our statements right up until today. We’re proactively reached out to the Minister and officials, offering our assistance as a sounding board so they can test ideas as we do across many issues impacting property but have had no response.

“For a government that publicly touts its willingness to work collaboratively and engage with the private sector to find solutions, they certainly seem hell-bent on disadvantaging the business community over and over again.

“To put a proposal like this on the table 40 days into the current lockdown and nearly 18 months after this issue was raised is simply too late in the piece.

“You have to wonder what’s next. Does this mean the sanctity of all commercial contracts is up for reprisal? Should homeowners have every mortgage contract overridden because the Government wants to insert a clause, should insurance or rates agreements be subject to the Government’s whim? This could affect the heart of every contractual agreement.

“It sends a very poor signal to the investment community when it appears a commercial contract is worthless depending on who is in power.”

ENDS.

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Notes to the Editor

Auckland District Law Society Lease Clause 27.5: No Access in Emergency

Here is the specific clause of the ADLS Lease referred to above:

If there is an emergency and the Tenant is unable to gain access to the premises to fully conduct the Tenant's business from the premises because of reasons of safety of the public or property or the need to prevent reduce or overcome any hazard, harm or loss that may be associated with the emergency including:

- (a) a prohibited or restricted access cordon applying to the premises; or
- (b) prohibition on the use of the premises pending the completion of structural engineering or other reports and appropriate certifications required by any competent authority that the premises are fit for use; or
- (c) restriction on occupation of the premises by any competent authority, then a fair proportion of the rent or outgoings shall cease to be payable for the period commencing on the date when the Tenant became unable to gain access to the premises to fully conduct the Tenant's business from the premises until the inability ceases.

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